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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,446	03/26/2001	Virginia C. Gordon	SAFTY-001BC	2044

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EXAMINER

TRAN, MY CHAU T

ART UNIT PAPER NUMBER

1639

DATE MAILED: 01/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/817,446

Applicant(s)

GORDON ET AL.

Examiner

My-Chau T. Tran

Art Unit

1639

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 December 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-7 and 67 (for reason of records).Claim(s) withdrawn from consideration: 68-78 (for reasons of records).

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
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Continuation of 5. does NOT place the application in condition for allowance because: Applicant has traversed the restriction requirement of the pending claims (Claims 1-7 and 67-78 are group as followed: Group I: Claims 1-7 and 67; Group II: Claims 68-77; Group III: Claim 78). The traversal is on the grounds that Group II and Group III should be rejoined with Group I, since the dependent claim 71 of Group II recite the element of Group I and the dependent claim 67 of Group I recite the element of Group III. This is not found persuasive because dependent claims are not relied upon as a criteria in the restriction requirement. Further, applicant has stated that the groups differ in scope. Therefore, these inventions are distinct for the reasons given above and the searches required are not co-extensive thus requiring a burdensome search, restriction for examination purposes as indicated is proper.

Applicant has included the withdrawn claims 68-78 in their arguments of the following rejections even though claims 68-78 are not examined.

Applicant argument for the rejection under 35 USC 112, first and second for claims 1-7, and 67 have been fully considered but they are not persuasive. Applicant alleges that the "lid" in claim 1 was intended to refer to cover (ref #12) of the test apparatus shown in fig. 5-6 and described in page 13, line 10 through page 18, line 25 of the specification. Sealing lids (ref. #24) may actually be considered to be part of the cover. Thus, when the lids (ref. #24) are in place, the cover (ref #12) does indeed seal each individual filtrate receiving vessel (ref #15) as well as the cavity (ref #17) of the housing (ref #16). It is the examiner's position that the cover (ref #12) does not seal "...each of said filtrate receiving vessels and said cavity of said housing". The cover (ref #12) has a series of sample port (ref #13) that directly align with the mouth of the filtrate receiving vessel (ref #15) when the cover and the test tube rack (ref #14) are properly mounted within the apparatus (ref #10) (see fig. 5-6; pg. 14, lines 1-4). Therefore, the cover (ref #12) does not seal each of the filtrate receiving vessel (ref #15) because to seal is to close something firmly or make something watertight or airtight so the sample port in the cover does not prevent closure or make the filtrate receiving vessel (ref #15) watertight. Furthermore, sealing lids (ref. #24) (should be ref. #22 since ref. #24 is the air inflow port (see pg. 16, lines 13-15 of amendment filed 4/29/02)) are mountable in sealing contact on the rim (ref. #20) of each primary membrane module (ref. #20) not the filtrate receiving vessel (ref #15). From fig. 5-6, the sealing lids (ref. #22) would seal the sample receiving vessel (ref. #21) and not the filtrate receiving vessel (ref #15) even if the sealing lids are considered to be part of the cover. Therefore, the rejection under 35 USC 112, first and second is maintained.

Applicant argument for the rejection under 35 USC 102(b) for claims 1-2, 4-7, and 67 as being unpatentable over Clark et al. (US Patent 4,902,481) have been fully considered but they are not persuasive. Applicant contends that Clark et al. do not anticipate the claimed invention because Clark et al. do not disclose each and every feature of the claimed invention. That is Clark et al. do not have a sample port that is part of the "cover" or support and that the membrane modules have portions made of a hard material and portions made of an elastomer material, wherein the elastomeric portions abut against neighboring components of the apparatus. It is the examiner's position that Clark et al. do anticipate the claimed invention because the sample ports (ref #11) are part of the plate (ref #12) (see fig. 1 and 3) and the filtration membrane (ref. #30) can be bonded to plate (ref #12) or can be held in position by being compressed between plate (ref #12) and plate (ref #113) (see fig. 3; col. 3, lines 26-28). In fig. 3 of Clark et al., the elastomeric portion (ref. #30) does abut the neighboring portion (ref. #24) and the membrane module (ref #12) does comprise an elastomer portion (ref. #30) and hard material portion (ref. #40). Therefore, Clark et al. do anticipate the claimed invention.

Applicant asserts that the rejection under 35 USC 103(a) for claim 3 as being unpatentable over Clark et al. (US Patent 4,902,481) in view of Oprandy (US Patent 5,039,493) is improper. Applicant argues that because Clark et al. does not disclosed each and every feature of the claimed invention and would not be made obvious by Clark et al. in view of Oprandy. It is the examiner's position that Clark et al. does disclose each and every feature of the claimed invention as discussed above. Therefore, claim 3 is made obvious by Clark et al. in view of Oprandy.